



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

FEB 14 2018

SECRET

2019-006-00029

MEMORANDUM FOR THE MINISTER

**CONCLUSION OF THE FRAMEWORK AGREEMENT BETWEEN CANADA AND
THE MALISEET OF VIGER
(FOR INFORMATION)**

SUMMARY

The purpose of this note is to inform you of the conclusion of the Framework Agreement negotiated between Canada and the Maliseet of Viger First Nation (the Agreement), located in the Lower St-Laurence region of Quebec (Tab 1). This Agreement is an initial milestone in the rights-based negotiation process, as it establishes a working relationship between Canada and the Maliseet of Viger and demonstrates the Parties' commitment to addressing their interests, including fisheries, through negotiations. The Agreement is not legally binding, with the exception of a limited number of process elements.

The Agreement is consistent with the 2017 mandate to negotiate Rights Reconciliation Agreements (RRA) with 34 Mi'gmaq and Maliseet First Nations in Atlantic Canada and the Gaspé region of Quebec and the Peskotomuhkati Nation at Skutik in New Brunswick (MMFNP). It also aligns with Canada's priority of advancing reconciliation with Indigenous groups through a renewed nation to nation relationship based on recognition of rights, respect, co-operation and partnership.

The Department participated in the negotiation of the Agreement, and it was reviewed by the Department of Justice, who did not have any concerns with the final draft text. The final draft was presented to the Federal Officials Group on Section 35 Rights on January 25, 2019 and subsequently submitted as a transactional item for information to the Federal Steering Committee on Section 35 Rights. Should no issues arise during this process, Minister Bennett will be within her authority to sign the Agreement on behalf of Canada.

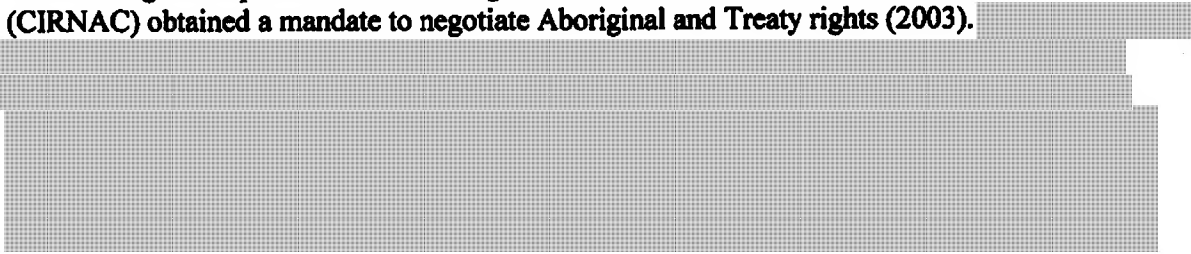
BACKGROUND

The Maliseet of Viger have a registered population of 1,204, all living off reserve given that their main reserve, Cacouna, measures less than one hectare. Their second reserve is larger, but the land is deemed uninhabitable.

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In the 1999 *Marshall* decision, the Supreme Court of Canada affirmed for the Mi'kmaq a treaty right to hunt, fish, and gather in pursuit of a "moderate livelihood" based on the 1760-61 Peace and Friendship Treaties. Canada concluded that the Maliseet of Viger from the Lower St-Lawrence region of Quebec also likely held this right, based on their signature of similar Treaties signed prior to 1760 with the British Crown. DFO responded to the *Marshall Decision* by providing commercial fishing access and programs for capacity building and, to further their ability to fish commercially, providing the Mi'kmaq and Maliseet First Nations with vessels, access and gear. In parallel, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) obtained a mandate to negotiate Aboriginal and Treaty rights (2003).



Since 2017, the Maliseet of Viger have demonstrated a renewed interest in negotiations, but progress and discussions have been limited to topics of federal jurisdiction such as fisheries and migratory birds since the Province of Québec does not have a mandate to negotiate section 35 rights with the Maliseet. Fisheries are a main interest of the Maliseet negotiations and have been a key discussion topic. Discussions are well underway to develop a fisheries RRA to implement their historical treaty rights as well as build their fisheries governance.

STRATEGIC CONSIDERATIONS

The Agreement is consistent with the 2017 RRA mandate for the MMFNP. It will advance the on-going RRA discussions and enable the Maliseet of Viger to access Treaty Related Measures funding to develop and test their fisheries governance.

This Agreement (Tab 1) is not legally binding, with the exception of provisions establishing that the Agreement is without prejudice, confidential, and otherwise not legally binding, and confirming that the honour of the Crown is at stake in any negotiations under the Agreement. Its objective is to demonstrate the parties' intent to work together to discuss the Maliseet of Viger's key interests, including fisheries, migratory birds, language and culture, and self-governance through the negotiations table.

INTERDEPARTMENTAL CONSULTATIONS

CIRNAC presented the final draft of the Agreement to the Federal Officials Group on Section 35 Rights on January 25, 2019 and will circulate the Agreement, as a transactional item, for information, to the Federal Steering Committee on Section 35 Rights. If no issues are raised, Minister Bennett will be within her authorities to sign the Agreement on behalf of Canada, should she choose to do so.

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Justice Canada has reviewed the agreement and do not have any concerns with its content. Regional officials have actively participated in the negotiation process and have expressed support of the Agreement.

EXTERNAL CONSULTATIONS

The Province of Québec attends the negotiation table regularly as an observer and has been kept apprised of the Agreement's development, including reviewing the final draft.

NEXT STEPS

Should no issues be raised during the Federal Steering Committee on Section 35 Rights process, it is anticipated that the Agreement will be signed by the Maliseet of Viger and Minister Bennett on behalf of Canada. A ceremony commemorating the signature of the Agreement may be held later this year.

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Timothy Sargent
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachment: (1)

- 1) Tab 1 - Framework Agreement
- 2) Tab 2 - Map of Maliseet Territory.

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ELITAHATOMEQ OLOQIW PILEY ELI MAWLUKHOTIYEQ

FRAMEWORK AGREEMENT TO RENEW RELATIONSHIP

– between –

**THE MALÉCITE DE VIGER FIRST NATION, as represented by the Grand Chief of
the Malécite de Viger First Nation**

(the “Malécites”)

– and –

**THE GOVERNMENT OF CANADA, as represented by the Minister of Indian Affairs
and Northern Development**

(“Canada”)

Collectively referred to as the “Parties” and separately “a Party.”

Wici yut kishomawotuwakon, Wolastoqiyik Viger naka Kisitposuwinuwok toleyak Kanata 'pawatomoniya weci pehqiyut Wolastoqeyak pomawsuwinuwok naka eli pawatomutit ahcelehtasu eli mawoluhkatitit. Pemkiskahk, tahalu mecimiw 'tolonapemuwa kisi wisuwonhomutit sankewitahasuweyal naka tutemeyal lakutuwakonol, Wolastoqiyik nihkaskomoniya weci lewestuwamtultitit, wici apqotehtekil 'tolitahasuwakonuwa naka kcitomitahasuwakon 'ci toqiw weci wewinomutit naka ankeyutomutit tpolukemuwakonol naka pawatomutit. Yut kishomawotuwakon oc 'qecihtun piley naka tetpeyawotultiyeq wici Crown, weci wolitpiyahtiyeq.

Through this agreement, the Malécite de Viger First Nation and the Government of Canada wish to honour the Wolastoqey people and their determination to build relationships among different nations. Like their ancestors did in the past with the Peace and Friendship Treaties, the Wolastoqey people prioritize dialogue, openness and mutual respect to obtain recognition and protection for their rights and interests. This agreement aims to establish a foundation for a new and egalitarian relationship with the Crown in a spirit of reconciliation.

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PREAMBLE

WHEREAS Canada recognizes that the Malécites have Aboriginal and treaty rights, specifically under the peace and friendship treaties, which are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

WHEREAS the Supreme Court of Canada has noted that section 35 of the *Constitution Act, 1982*, calls for a process of reconciliation between the Crown and Aboriginal peoples through which the constitutionally protected rights and outstanding claims of Aboriginal peoples are determined, recognized and respected through honourable negotiations with the goal of reaching just and lasting settlements;

WHEREAS the Parties wish to renew their nation-to-nation, government-to-government relationship based on recognition of rights, respect, co-operation and partnership, in accordance with the objective of section 35 of the *Constitution Act, 1982*;

WHEREAS Canada fully and unequivocally supports the United Nations Declaration on the Rights of Indigenous Peoples and its objectives;

WHEREAS Canada adopted the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples in July 2017;

WHEREAS the Parties wish to work in partnership with the common goal of achieving Malécites self-government;

WHEREAS the Parties recognize that in order to have effective, harmonious negotiations, the Malécites must have adequate financial and organizational capacity;

WHEREAS the Parties will encourage Quebec's participation in the work that will result from this Agreement.

NOW THEREFORE, the Parties agree as follows:

1. DEFINITIONS

1.1. In this Agreement, "*communication*" means any discussion, information, document or exchange, in any form, including, but not limited to, written, verbal or electronic, transmitted from one Party to the other for the purpose of negotiations under this Agreement or created for that purpose. Information in the public domain, public documents, or information or documents wholly made from information that is legally accessible, independently of the negotiations, are not covered by this definition.

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2. FRAMEWORK AGREEMENT OBJECTIVES

- 2.1. The Parties shall seek to implement the rights of the Malécites as recognized and affirmed by section 35 of the *Constitution Act, 1982*, in one or more agreements. The Parties recognize that the negotiations shall not modify or extinguish the rights of the Malécites as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 2.2. The Parties shall seek to implement effective processes to facilitate their nation-to-nation, government-to-government relationship.

3. GENERAL PROVISIONS

- 3.1. The preamble forms part of this Agreement.
- 3.2. Canada recognizes that the Malécites have Aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, and is committed to working with the Malécites to implement them.
- 3.3. Negotiations under this Agreement concern the geographical region of Quebec and shall not extinguish, affect or constitute a waiver of any rights that the Malécites may hold outside of this geographical region.
- 3.4. Negotiations under this Agreement concern matters within the jurisdiction of Canada, not matters within the jurisdiction of Quebec or any other province.
- 3.5. The Parties recognize that Quebec's participation is important to the implementation of Malécites Aboriginal and treaty rights. To this effect, the Parties shall encourage Quebec's participation in the work arising from this Agreement and, where appropriate, make such modifications as may be necessary to permit such participation.
- 3.6. The Parties commit to conducting the negotiations in good faith, in a spirit of co-operation and collaboration, through transparency and innovation.
- 3.7. Nothing in this Agreement prevents the Malécites:
- a. from negotiating or implementing any agreement with third parties, including Quebec;
 - b. accessing economic incentives or economic development opportunities to which they may have access;

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- c. accessing government programs and services for which they may be eligible.

3.8. The recognition of rights, reconciliation and the right to self-determination and self-government shall take a comprehensive, innovative approach that will transform the relationship between Canada and the Malécites.

4. SUBJECTS OF NEGOTIATION

4.1. The Parties agree that the recognition of rights, reconciliation and implementation of the Malécites right to self-determination and self-government require negotiations on a range of subjects.

4.2. In order to achieve the objectives set out in articles 2.1 and 2.2, the Parties intend to conduct negotiations on the subjects below. This list is not exhaustive, may be amended by the Parties in light of how the negotiations progress, and may be revised if Quebec joins the negotiation:

- a. Malécites food, social, ceremonial and commercial fisheries, including harvesting and cultivation of fishery resources;
- b. marine mammals;
- c. self-government, including the legal status and legal capacity of the Malécite de Viger First Nation and membership in the Malécite Nation;
- d. taxation;
- e. migratory birds;
- f. Malécite language, culture and heritage, including sacred sites and archaeology;
- g. land regime, including reserve lands and any other place of interest;
- h. environmental assessment and protection;
- i. intergovernmental relations;
- j. the consultation and accommodation process.

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4.3. This Agreement does not require the Parties to reach an agreement or offer benefits in relation to the subjects listed in article 4.2 or in the interim or sectoral agreements contemplated in article 5.1.

5. INTERIM OR SECTORAL AGREEMENT

5.1. The Parties may negotiate and enter into interim or sectoral agreements. These interim or sectoral agreements shall advance the negotiations under this Agreement and shall not have the effect of delaying them.

6. STATUS AND INTERPERTATION OF THIS FRAMEWORK AGREEMENT

6.1. Except for sections 6 and 9 and articles 7.1 to 7.3 and 10.1, this Agreement and the work undertaken pursuant to it do not create any legal obligations that are binding on the Parties, unless otherwise agreed to in writing by the Parties.

6.2. Unless otherwise specified in subsequent agreements, this Agreement and the work carried out under it:

- a. are without prejudice to the positions or rights of the Parties, including the Aboriginal and treaty rights of the Malécites;
- b. do not create, define or alter the positions or rights of the Parties, including the Aboriginal and treaty rights of the Malécites;
- c. shall not be interpreted or construed as a consultation to justify an infringement by Canada on Malécites Aboriginal or treaty rights;
- d. are not a treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

6.3. Except for the purposes of applying articles 6.1 and 6.2 of this Agreement or unless otherwise agreed to in writing, the Parties undertake not to enter any *communication* into evidence and not to seek the admission of any *communication* into evidence in a court of law or in any other legal proceeding.

6.4. Notwithstanding any other provision of this Agreement, a Party may make public reference to the Parties to this Agreement, its effective date, its existence and purpose, and the frequency and attendance at meetings held as a result of its application, and enter such information into evidence in a court of law or any other legal proceeding.

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7. CONFIDENTIALITY, COMMUNICATIONS AND PUBLIC AWARENESS

- 7.1. Any *communication* is confidential and may not be released, disclosed or published in any form except with the express written consent of the other Party or where required by law.
- 7.2. To ensure that individuals, groups and organizations that may have an interest in the outcome of the negotiations are informed of the overall status, goals and progress of the negotiations, the Parties agree that they may:
- a. participate in joint meetings with such individuals, groups and organizations;
 - b. conduct information activities separately that each considers appropriate;
 - c. issue joint or separate statements to the media on the progress of the negotiations.
- 7.3. This Agreement does not prevent a Party from informing and consulting its members and institutions in any manner it considers appropriate. The disclosure of any *communication* to a Party's members or institutions does not constitute a waiver of confidentiality or the "without prejudice" nature of the *communication*.
- 7.4. The Parties recognize that it is desirable for the negotiations to proceed at a pace that allows the Malécites to properly inform their members.
- 7.5. This Agreement shall be public once the Parties have signed it.
- 7.6. All agreements entered into between the Parties, including interim or sectoral agreements, shall be made public unless otherwise agreed by the Parties.
- 7.7. The Parties may develop a joint communication plan prior to the signing of this Agreement, if they deem it necessary.

8. WORK PLAN AND FUNDING

- 8.1. Periodically, the Parties agree to establish a work plan for the negotiation of the subjects set out in article 4.2; said work plan shall take the status of the work into account and shall set out the frequency of meetings required for further negotiations.
- 8.2. Upon review of the work plan and subject to available financial resources, Canada shall allocate funds to the Malécites to ensure that they have reasonable

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organizational capacity to participate in the negotiation process and to achieve the objectives of this Agreement.

9. AMENDMENT AND TERMINATION

- 9.1. This Agreement may be amended with the written consent of the Parties, including in consideration of any further progress, development or agreement that may affect this Agreement.
- 9.2. A Party wishing to terminate this Agreement shall send a ninety (90) day notice of intent to terminate to the other Party, including the reason for termination. The Parties shall then initiate, within thirty (30) days from the date of receipt of the notice of intent, discussions to promote the continuation of negotiations under this Agreement. At the end of the 90-day period following the issuance of the notice of intent, either Party may issue a notice of termination, which shall take effect immediately.
- 9.3. Any termination of this Agreement shall not result in the repayment of monies allocated by Canada for work already performed or committed.
- 9.4. Notwithstanding any termination of this Agreement, Section 6 and articles 7.1 to 7.3, 9.3 and this article shall remain in force.

10. APPROVAL PROCESS BY THE PARTIES

- 10.1 This Agreement comes into effect on the day it is signed by the Parties.

Signed in Quebec, this _____ day of _____, 2018.

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THE MALÉCITE DE VIGER FIRST NATION

Grand Chief Jacques Tremblay

Witness

THE GOVERNMENT OF CANADA

The Honourable Carolyn Bennett
Minister of Indian Affairs and
Northern Development

Witness

